16: Müller--236 [2] U-3 (no date) 1910 Formosan Aborigines
116, 692, 695, 721, 787

The aboriginal chiefs administer justice either independently or together with the tribal elders. If a case is doubtful a trial by ordeal is held. This is preceded by certain formalities. The chieftain first of all asks the soothsayers and the men who interpret dreams whether a trial by ordeal should be held. If he has their consent he orders the accused to go on a headhunting expedition. The latter then makes the necessary preparations. He puts his weapons in a sacred place and lives in seclusion in a hut. If a day arrives which from the flight of birds he judges to be favorable he starts on the expedition together with several friends. If he is successful he is declared free from guilt, but if he returns home without a head he is punished.

18: Kakyo--70 [6] E-2 No date) 1899 Formosan Aborigines
116, 692

Justice is enforced by the chief among Formosan aborigines.

19: Guérin and Bernard--564 G-3 (ca. 1866) 1868 Formosan Aborigines
116, 622, 682, 692

He [VMM: i.e. the magistrate in a savage community] is a justice of the peace, and he always tries to conciliate the parties. There is no murder among these savage tribes, but theft is rather frequent and only in exceptional cases does the victim render justice himself. The parties appear before the magistrate, and he tries to appease the feeling of hatred between them and to make the delinquent restore the goods or at least pay compensation for them.

The person who is the political representative and the military leader also has sufficient prestige to handle legal business. If it is a question of matters which concern individuals of the same clan, the clan chief is capable of dealing with them, but if members of different clans are involved, the tribal chief handles them. There is no difference between them, except the one that has just been mentioned, as to the type of matters that they handle. The procedure is the same also. If members of different tribes are involved, there is no legal procedure, if this expression is permissible, for there is no institution in their society which is superior to the tribe, and which could decide which one was right. The matter either is left unsettled, or force of arms determines who is in the right.

22: Wiedfeldt--28 [7] F-5 (1913) 1914 Formosan Aborigines
116, 681, 574, 692 Atayal

The fine is considered something not good, and is therefore spent by the clan or the family that receives it for a clan feast, the schukun [MC: the ornamented clothing with which the fine was paid.] being exchanged for a pig or for sake. In many tribes, the clan chief keeps the fine and adds it to a fund out of which he occasionally pays fines.

22: Wiedfeldt--42 F-5 (1913) 1914 Formosan Aborigines
116, 692, 614 Atayal

Whereas nowadays the corporate body of the state has pushed the injured party to one side, and only in exceptional cases allows him to appear as co-plaintiff, while it acts independently of him through the medium of its experts, an injured party among the Atayals takes the law in his own hands. He kills the adulterer or murderer, and he takes back by force what has been stolen from him. If he can not obtain his rights alone, he calls upon his clan for help, and he alone, or strengthened by his solidarity with his clan, appears as the only plaintiff and demands compensation. The chief of the tribe does not interfere except in the case of an unreasonable demand, or to help determine the identity of the criminal. The fines never flow into the community coffers, that is, those of the tribe, but always into those of the clan, or they go direct to the injured party, who is under obligation to use them for the benefit of the clan.

22: Wiedfeldt--42-43 F-5 (1913) 1914 Formosan Aborigines
116, 421, 614, 672, 692 Atayal

It may be shown that the Atayals recognize the existence of such a thing as a corporation from the fact that the clan has property, buys and sells land, that it has definite representation, and that action may be brought against it, as it may bring action against someone else. In spite of this, I do not think that the Atayals see the clan as a special repository of their legal rights. It is more probable that they merely regard the head of the clan as the member who has to take care of the joint liabilities of the families in the clan together with them and as their authorized agent. Taking the law into one's own hands is not limited to cases of self-defence. For example, if an adopted child runs away, and the adoption money is not returned, the head of the family can take another child from this family or clan without further ado. [43] Other legal principles, such as fixing a term, or full power of attorney, are also known.

Finally, some traces of formal legal procedure may also be detected, although there is no training in the law nor even a special legal profession as such. In cases of civil law, the chief of the tribe is not really the authority who has the deciding word on the legal aspect of the case. He merely collects the evidence, and from the results of this, the decision is clear to everyone, and the deductions to be made are self-evident, for everyone is well acquainted with the legal usages. In criminal law, the chief of the tribe has considerably more power, because the community has a real interest in not permitting a crime, for example, adultery, to go unpunished through the complaisance of the husband. Nor do they wish the murder of a child to go unavenged by the head of a family, because the murderer was a more powerful neighbor, and they are anxious to prevent the irascible victim of a thief from taking the law into his own hands and thus committing a new and unjustifiable crime. As representatives of the community in such cases the two most highly respected [45] men are naturally called to serve. At the same time, if it is necessary, they pass on the possibility of carrying out the sentence. Their jurisdiction is simply and clearly limited according to whether members of the same clan, or members of different clans are involved in the case. Where there is no such spokesman, there is no course of law, so that among the Atayals all of their legal activity has continued to be limited to the individual tribe.

22: Wiedfeldt--45 F-5 (1913) 1914 Formosan Aborigines
116, 692, 695 Atayal

In the Atayal tribes, each of the two legal authorities decides his cases definitely, with no possibility of appeal. There are no lay assessors or boards. The two chiefs act independently, although they themselves are laymen, and live on equal terms with the other members of their tribe. The action is taken by the injured party, or civil plaintiff, and in some cases by his clan. The community only helps him to obtain his legal due, or intervenes, if he refuses to act. Naturally, the proceedings are conducted orally, and are brief. The testimony of eye-witnesses or the skull-hunt serve as evidence.

Administration of justice is always in the hands of the chief.

The chief examines the question, listens to the parties and some witnesses, and gives a verdict. Sometimes he puts his sentence into effect at once, or he may let the victim or his family attend to it. In doubtful cases, when there is no other way to reach a decision, the natives invoke the gods. In other words, the deceased ancestors of the contending parties are invoked to make the decision. There are two ways of obtaining this decision--they are head-hunting and single combat. Head-hunting is organized in this manner: the two opponents, who are frequently accompanied by their friends, go out separately and attack Chinese peasants who are working alone in the field, or they attack unprotected settlements, and then they behead those people whom they can overpower. The group which comes back with one, or several, or with the largest number of heads has won the suit. [40] The duel is fought by the two opponents, or, if one of them is accused of murder, it is between the accused and the accuser, who is usually a relative of the murdered man. They fight until one of them kills the other and cuts off his head. This indicates that the ancestors have given the victor strength to vanquish his opponent, and this demonstrates the innocence or justice of his accusation--the guilty man has received his punishment.

The affair is more serious when the opponents belong to different tribes. The chiefs generally try to reach a peaceful settlement, but they do not always succeed, and then there is no other recourse but to settle the quarrel by battle between the two tribes.

25: Plaut--40 U-4 (no date) 1903 Formosan Aborigines
116, 622, 681, 692

The chief's decision is invoked when there is a murder, in cases of adultery and seduction, theft, calumny, and quarrels. Nearly all of the tribes believe that each act has its price, and that if the guilty man pays this price, he can be exonerated from all blame. In many tribes it is left to the victim to decide whether he will accept the money, or whether he prefers the revenge.

25: Plaut--40 [4] U-4 (no date) 1903 Formosan Aborigines
116, 622, 682, 692 Paiwan

The chief of the Paiwan convokes a tribunal of selected members of the tribe for the abjudication of capital crimes; the murderer is always permitted to pay a ransom, and its amount varies according to whether the perpetrator can show a "just cause" for his deed or not.

31: Hofmann--625 N-3 (1909) 1912 Formosan Aborigines
116, 622, 692 Tsou

As far as we know, the office of chieftain today is passed on through inheritance; the chieftain is also the only judge in the tribe. Each tribal village also has its local chief, chosen by the people themselves; these subordinate chiefs, however, exercise very little power.